

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BERNARD KAIRIS,

Petitioner,

07-CV-6622L

-vs-

ORDER

THOMAS POOLE,

Respondent.

Pro se petitioner Bernard Kairis has pending this Court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See* Docket No. 1. Kairis has requested that he be provided with a copy of his *pro se* motion to vacate the judgment pursuant to New York Criminal Procedure Law and a copy of the transcript of the evidentiary hearing held in Ontario County Court of New York State Supreme Court. He has also requested an extension of time to reply to respondent's answer and opposition memorandum of law.


First, with regard to his request for a copy of his C.P.L. § 440.10 motion, filed in 2005, the Court has not been provided with a copy of that pleading in the state court records submitted by respondent. When the New York State Attorney General's Office answered the petition on behalf of respondent, they stated that the Ontario County District Attorney's Office did not provide with a copy petitioner's *pro se* C.P.L. § 440.10 motion. No explanation was given. At this time, the Court is unable to provide Kairis with a copy of it. However, the Ontario County District Attorney's Office is directed to review its files and notify the Court whether or not this pleading exists. If it does, then a copy must be provided to the New York State Attorney General's Office, which shall then serve a copy on petitioner and the Court. If the Ontario

County District Attorney's Office cannot locate a copy of it, then it must notify the Court as soon as possible as to the reason.

With regard to Kairis' request for the C.P.L. § 440.10 hearing transcript, I note that the transcript is relevant to one of Kairis' main habeas claims. Although it does not typically provide transcripts to indigent petitioners, the transcript is not lengthy and Kairis does appear to need a copy of it to reply to respondent's answer. Therefore, in the interests of justice, the Court is providing a copy of the transcript to petitioner under separate cover.

Finally, Kairis' request for an extension of time is granted. Petitioner shall have thirty (30) days from the date of his receipt of the C.P.L. § 440.10 transcript in which to file his reply memorandum of law.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 16, 2008.